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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,899	11/23/2001	Gregory M. McGregor	AZOTH-1	3388
7590	11/17/2006		EXAMINER	
John T. Whelan 3375 Bayside Road Huntingtown, MD 20639			LESNIEWSKI, VICTOR D	
			ART UNIT	PAPER NUMBER
			2152	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,899

Applicant(s)

MCGREGOR ET AL.

Examiner

Victor Lesniewski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed 8/30/2006 has been placed of record in the file.
2. Claims 2 and 11 have been amended.
3. Claims 2-19 are now pending.
4. The applicant's arguments with respect to claims 2-19 have been considered but are moot in view of the following new grounds of rejection.

Continued Examination Under 37 CFR 1.114

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous office action has been withdrawn pursuant to 37 CFR 1.114. The applicant's submission filed on 3/31/2006 has been entered.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 2, 3, 6, 7, 10-12, 15, 16, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Farber et al. (U.S. Patent Number 6,185,598), hereinafter referred to as Farber.

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8. Some claims will be discussed together. Those claims which are essentially the same except that they set forth the claimed invention as an apparatus are rejected under the same rationale applied to the described claim.

9. Farber has disclosed:

- <Claims 2 and 11>

A method of dynamic content translation and switching comprising the steps of: generating a request at a client location for internet data, said request defining a first service location by which said request is to be fulfilled (column 4, lines 49-63); reading an underlying application protocol header and processing the request based on the underlying application protocol applicable (column 7, line 56 through column 8, line 6); breaking the first service location (column 5, lines 3-7); determining, in accordance with at least one rule set and the processing of said request, a second service location by which to fulfill said request (column 8, lines 19-25); and servicing said request from a different service location which has been determined best by the at least one rule set applied and allowing that service location to use a return path generated by Internet Protocols to fulfill the request (column 10, lines 60-63).

- <Claims 3 and 12>

A method according to claim 2, wherein said at least one rule set comprises a peak throughput determination rule set (column 11, lines 38-46).

- <Claims 6 and 15>

A method according to claim 2, wherein said at least one rule set comprises a cost-of-service rule set (column 11, lines 28-37).

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- <Claims 7 and 16>

A method according to claim 2, wherein said at least one rule set comprises a geographic rule set (column 11, lines 55-58).

- <Claims 10 and 19>

A method according to claim 2, wherein said request is routed to different types of content than originally requested (column 17, lines 29-35).

Since all the limitations of the invention as set forth in claims 2, 3, 6, 7, 10-12, 15, 16, and 19 were disclosed by Farber, claims 2, 3, 6, 7, 10-12, 15, 16, and 19 are rejected.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 4, 9, 13, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farber, as applied above, in view of Porras et al. (U.S. Patent Number 6,484,203), hereinafter referred to as Porras.

12. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farber, as applied above, in view of Mangipudi et al. (U.S. Patent Number 6,728,748), hereinafter referred to as Mangipudi.

13. Claims 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farber, as applied above, in view of Rhoads (U.S. Patent Number 6,311,214).

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14. Concerning claims 4, 5, 8, 9, 13, 14, 17, and 18, Farber did not explicitly state a specific rule set as defined in the claims. Farber does state the processing of requests by a best repeater selector that selects a proxy server based on various rules, however, he does not specifically teach rules that include a time-of-day rule set, a type-of-content rule set, a demographic rule set, or a health-of-system rule set. Although Farber is not specific in this regard, the claimed limitations are often used in the art in network monitoring systems that track network performance. The specific claimed rule sets are thereby evidenced by various prior art systems (namely Porras, Mangipudi, and Rhoads) as shown below. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Farber by adding the ability to utilize a time-of-day rule set or a health-of-system rule set as provided by Porras. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Farber by adding the ability to utilize a type-of-content rule set as provided by Mangipudi. It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify the system of Farber by adding the ability to utilize a demographic rule set as provided by Rhoads. Here the combinations satisfy the need for a network system that can balance load across multiple mirror servers serving the same web site while also taking into account the network distance between the client and the mirror servers. See Farber, column 2, lines 7-12.

15. Thereby, the various combinations (as stated in sections 11-13 above) disclose:

- <Claims 4 and 13>

A method according to claim 2, wherein said at least one rule set comprises a time-of-day rule set (Porras, column 5, lines 23-45).

- <Claims 5 and 14>

A method according to claim 2, wherein said at least one rule set comprises a type-of-content rule set (Mangipudi, column 4, line 66 through column 5, line 15).

- <Claims 8 and 17>

A method according to claim 2, wherein said at least one rule set comprises a demographic rule set (Rhoads, column 9, lines 39-48).

- <Claims 9 and 18>

A method according to claim 2, wherein said at least one rule set comprises a health-of-system rule set (Porras, column 5, lines 23-45).

Since the combinations of Farber and Porras, Farber and Mangipudi, and Farber and Rhoads disclose the above limitations, claims 4, 5, 8, 9, 13, 14, 17, and 18 are rejected.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

- Li et al. (U.S. Patent Number 6,119,162) disclosed a method for dynamically selecting a web server.
- Ebata et al. (U.S. Patent Number 6,513,061) disclosed a network system that uses a selecting server to select the most appropriate proxy server for a client request.
- Menditto et al. (U.S. Patent Numbers 6,968,389 and 6,981,029) disclosed a content gateway to process requests for information from a client.

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17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Lesniewski whose telephone number is 571-272-3987.

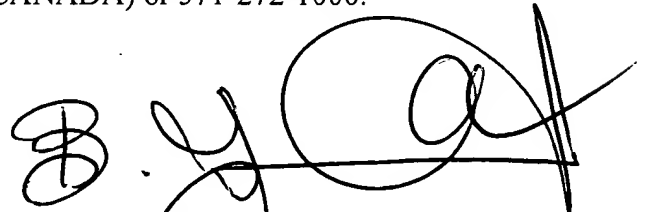
The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Lesniewski
Patent Examiner
Group Art Unit 2152



BUNJOB JAROENCHONWANIT
SUPERVISORY PATENT EXAMINER